



# ADVISORY NOTICE BUILDING

15/06

Advisory Notices are issued to assist in the interpretation of the Development Act 1993

September 2006

## TECHNICAL:

### Development Regulations 1993 Land divisions

This Advisory Notice is being issued in response to a number of queries about amendments made to the Development Regulations in relation to building issues arising from land divisions.

#### BACKGROUND

In South Australia a division of land is a form of development that has to meet certain legislative requirements before a new title(s) can be registered in the Land Titles Office. Legal provisions that apply to land divisions are found in the *Real Property Act 1886*, the *Community Titles Act 1996* and the *Development Act 1993*.

Under the Real Property Act, land is divided into allotments and certificates of title are issued for one or more allotments. When land is divided under the Community Titles Act, the whole community parcel is regarded as one allotment and that allotment or parcel is divided into individual lots and community lots (not allotments). For the purposes of land use and open space requirements, however, the Development Act overrides this and regards community lots, development lots and community property in a community division as 'allotments'<sup>1</sup>. This has caused confusion when considering fire safety issues under the Building Rules as to whether the boundaries between individual lots and community lots are regarded as 'allotment boundaries' and therefore fire source features under the Building Code of Australia (BCA). Several amendments have been made to the Development Regulations to address this and other fire safety issues that occasionally arise with land divisions. This Advisory Notices attempts to provide further explanation and clarification of these issues.

Under the Development Act a relevant authority can only issue a development approval for development involving a land division, if consents have been granted in respect of-

1. compliance with the relevant Development Plan; and
2. compliance with the Building Rules; and
3. compliance with relevant conditions specifically relating to divisions of land; and
4. if applicable, the satisfactory resolution of any encroachments over public places; and
5. compliance with any other relevant matters specified in the regulations.



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In many cases an application for a land division will not involve proposed building work or existing buildings, so the building rules will not need to be considered. However, in other cases where there are

<sup>1</sup> Reg 4 definition of 'allotment'.

buildings on the site, an assessment will need to be made of the effect the proposed sub-division will have on those buildings and the way they are proposed to be used.

Specific conditions relating to land divisions that need special consideration if there are buildings on the site include-

- **an assurance that each allotment resulting from a sub-division can legally be used for its proposed purpose** (eg in the case of existing Class 1a dwellings, each dwelling must have sufficient natural light, natural ventilation, kitchen, laundry and sanitary facilities. Any parts of the buildings exposed to a new allotment boundary must also comply with the fire resistance requirements of the BCA. In some cases, binding arrangements to register party walls on the title may also need to be addressed and agreed).
- **that each lot or unit created by a plan of community division will be appropriate for separate occupation** (eg in the case of an existing Class 2 building, each separate dwelling or unit must have sufficient natural light, natural ventilation, kitchen, laundry and sanitary facilities, and fire safety separation required for a Class 2 building under the BCA).
- **that any part of a building intended to establish a boundary of a lot or unit is appropriate for that purpose** (eg a proposal to divide a row of flats into single dwellings will need to have lot boundaries on wall lines, not halfway across rooms. If it is proposed that the flats are to be re-classified as Class 1a buildings, then the separating walls must be fire walls, otherwise the dwellings may be assessed and classified as sole-occupancy units in a Class 2 building).
- **complying with anything specifically relating to land divisions prescribed in the development regulations** (eg specific provisions relating to fire safety issues<sup>2</sup>).

### **Consideration of the Building Rules**

For standard land divisions (other than by a community plan division) where there are existing buildings on the allotment, the council may need to consider the following -

- the effect the land division will have on parts of a building providing structural support to another part of the building that will be on an adjoining allotment as a result of the sub-division. It may, for instance, be necessary to register a party wall on the title or provide an alternative means of support;
- the effect the land division will have on fire safety between buildings, as a new allotment boundary will become a new fire source feature under the Building Code of Australia;
- the effect the land division will have on existing fire services and equipment within a building proposed to be divided;
- whether each building will have adequate sanitary and other facilities when divided and separately occupied;
- whether access and egress will be restricted or impeded by the proposed division.

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<sup>2</sup> Regulations 4, 5, and 5A of the Development Regulations 1993

<sup>3</sup> Regulation 5A of the Development Regulations 1993

<sup>4</sup> Regulation 4(3)(a) of the Development Regulations

<sup>5</sup> Regulation 4(3)(b) of the Development Regulations

A new allotment boundary can affect the fire safety of existing buildings because it becomes a new fire source feature that will not have been previously considered. If a part of an existing building will become exposed to a fire source feature as a result of the proposed sub-division, then that part must have certain fire resistance requirements in accordance with the Building Code. This might mean that parts of the building will need to be upgraded before the sub-division is approved (unless the applicant enters into a binding agreement with the council to upgrade those parts by a certain date), in which case the granting of a building consent may very well be relevant to the granting of a development approval.

Although the Act and Regulations allow for binding arrangements to be made to ensure that required conditions will be met, in the case of Class 1 and 2 buildings this cannot be used for dealing with fire safety issues arising from any new boundaries to be created by a land division. Any walls of Class 1 and 2 buildings that will become exposed to a fire source feature as a result of a proposed land division **must** comply with the fire resistance requirements of the Building Code **before** the development is approved<sup>3</sup>.

#### **Land divided by a plan of community division**

Regulations 4(2) clarifies that when land is divided by a plan of community division under the Community Titles Act, some of the boundaries between units, and between units and common property, are not fire source features for the purposes of the Building Code, because they are not considered 'allotment' boundaries within the meaning of the Community Titles Act and the Real Property Act.

This does not mean however, that other fire resistance requirements of Part C of the Building Code do not apply. For instance, a Class 2 building that is divided by a plan of community division may still have requirements under the Building Code for walls bounding sole-occupancy units to have certain fire resistance levels, even though they are not fire source features<sup>4</sup>.

Also, the perimeter boundary of a community parcel proposed to be sub-divided may still be a fire source feature because it forms a boundary to other adjoining allotments, therefore any building parts exposed to them must still meet the fire resistance requirements of the Building Code<sup>5</sup>.

#### **Party walls and common walls**

In relation to land titles other than community titles, the Development Act contains special provisions for party walls. These address legal issues relating to the creation of easements of support and rights of building owners when certain actions affecting party walls are proposed to be undertaken.

A party wall is defined in the Development Act as *'a wall built to separate two or more buildings or a wall forming part of a building and built on the dividing line between adjoining premises for their common use and includes a common wall for the purposes of the Building Code of Australia'*.

Sections 61 to 64 of the Development Act outline special requirements relating to building or altering party walls. This includes giving notice to adjoining owners, obtaining owner's consents, sharing of costs and expenses, powers of entry, creating easements of support and registering party walls on land titles.

In the case of a community division however, easements for support, shelter, projections and access to services exist between lots and between lots and common property to the extent required by the nature of the community scheme and all legal implications are addressed through the community plan and the by-laws of the scheme. The Development Act provisions for party walls and common walls will therefore only apply where shared walls occur along a perimeter boundary of the community parcel, thereby affecting adjoining owners of land outside of the community scheme.

#### **Further information**

The following publications provide further information about Strata and Community Title land divisions:

- 'Community Titles – An explanation of the Community Titles Act 1996', 5<sup>th</sup> reprint January 2001 published by the Department of Administrative and Information Services, Land Services Group.
- 'Strata and Community Titles' – produced by the Legal Services Commission with assistance from the Land Services Group, July 2005.
- 'Guide for Applicants - Land Division Guide' – published by Planning SA, Department for Primary Industries and Resources, can be sourced through [www.planning.sa.gov.au/go/development-applications/land-division](http://www.planning.sa.gov.au/go/development-applications/land-division)

#### **Further information**

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